

Issue: Rolling Stock (Purchase/Sale Claimed To Be Exempt)

This contested case originally arose because the Department auditors assessed tax upon three pickup trucks Taxpayer purchased tax free by claiming the rolling stock exemption, and this is the issue in this matter.

At the February 28, 1995 rehearing Taxpayer testified and referred to a group exhibit (Taxpayer Ex. No. 1) of documents in which he acknowledged liability for the tax, interest and penalty through the issuance date of the original NTL. Taxpayer also requested relief for additional interest after that date on the basis of equitable grounds.

Department Exhibits Nos. 1 through 7 were admitted at the initial (6/10/87) hearing and these included the audit workpapers (Dept. Ex. No. 2A) and the Correction of Returns (Dept. Ex. No. 2).

After considering this matter, I recommend the issue be resolved in favor of the Department.

FINDINGS OF FACT:

1. Taxpayer conducted business in Illinois during July 1981 through September 1985. (Dept. Ex. No. 2A).

2. The Department issued NTL No. XXXXX to Taxpayer on August 26, 1986 for \$3,083.20, and also issued Final Assessment No. XXXXX to Taxpayer on October 1, 1987 for \$3,322.04 inclusive of penalty and interest. (Dept. Ex. Nos. 3 and 8).

3. Taxpayer submitted no records to the auditors to establish that the pickup trucks in question were used as rolling stock in interstate commerce. (Dept. Ex. No. 2A).

4. Taxpayer produced no records at the rehearing that show that the pickup trucks were used as rolling stock in interstate commerce. (2/95 Tr. pp. 3, 7-11).

CONCLUSIONS OF LAW: As Taxpayer has submitted no records such as trip sheets, drivers logs, etc., to document the rolling stock exemption, I find he has not met his burden of overcoming the prima facie case of the Department established in this matter by the introduction of its corrected return into the record. Accordingly, I recommend the Final Assessment be upheld as issued.

Relative to Taxpayer's request for an abatement of part of the interest on equitable grounds, I lack authority to grant this abatement.

RECOMMENDATION: For the reasons cited above, I recommend the Department not reduce the liability and issue a Revised Final Assessment.

Karl W. Betz
Administrative Law Judge